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Docket No. -DEP-0468

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Voellmicke et al. Group Art Unit: -  
Serial No.: 09/784,383 Examiner: -  
Filed: February 15, 2001  
Title: Vertebroplasty Injection Device And Bone Cement Therefor

CERTIFICATE OF MAILING

I, Karen Day, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington DC 20231 on October 5, 2001.

Karen Day (signature)  
Karen Day

10/5/01 (date)

Thomas M. DiMauro (name of Registered Representative)

Commissioner for Patents  
Washington, D.C. 20231

PETITION UNDER 37 CFR 1.183 FOR SUSPENSION OF RULES

Sir:

In accordance with 37 CFR 1.183, Applicant respectfully requests for a suspension of the rules related to 37 CR 1.8a, and accord Applicants' Preliminary Amendment a filing date of September 14, 2001.

**1. Statement of Facts**

On September 14, 2001, Applicants prepared a Preliminary Amendment and associated postcard for the above-captioned patent application, and mailed the same in an envelope addressed to the Assistant Commissioner of Patents on September 14, 2001 with a Certificate of Mailing in compliance with 37 CFR 1.8a in order to obtain a filing date of September 14, 2001.

On October 1, 2001, the undersigned received the above-mentioned envelope at the undersigned's return address and immediately opened it to confirm its contents. It appears that the US Postal Service mistakenly misdelivered the envelope containing this

10/15/2001 GTEFFERA 00000010 100750 09784383

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Preliminary Amendment back to the undersigned at the undersigned's return address marked on the envelope.

## **2. Point to be Determined**

Since the Preliminary Amendment was mailed on September 14, 2001 in full compliance with 37 CFR 1.8a, and its subsequent non-delivery to the Assistant Commissioner appears to have been solely due to a mistake by the US Postal Service, Applicants respectfully submit that this Preliminary Amendment should be accorded a filing date of September 14, 2001.

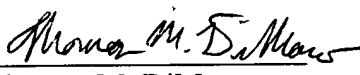
## **3. Declaration**

Enclosed is a Declaration and Statement of Karen Day, the administrative assistant, who mailed the envelope containing the Preliminary Amendment and associated postcard on September 14, 2001, and attests to the previous timely filing of the above-mentioned correspondence.

## **4. Fee**

In accordance with 37 CFR 1.17(h), please charge the fee required for this submission to the Johnson & Johnson Deposit Account No. 10-0750/DEP0468/TMD. Three copies of this request are enclosed.

Respectfully submitted,

 10-04-01  
Thomas M. DiMauro  
Attorney for Applicants  
Reg. No. 35,490  
DePuy AcroMed Inc.  
325 Paramount Drive  
Raynham, MA 02767  
(508) 880-8401

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Docket No. DEP-0468

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Inventor: Voellmicke et al. Group Art Unit: -  
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Karen Day (signature)  
Karen Day

10/5/01 (date)

Thomas M. DiMauro (name of Registered Representative)

Commissioner for Patents  
Washington, D.C. 20231

Sir:

STATEMENT AND DECLARATION ATTESTING TO MAILING OF PTO  
CORRESPONDENCE UNDER 37 CFR 1.8(A)

I, Karen Day, declare and state that:

1. I am an administrative assistant at DePuy AcroMed Inc. in Raynham, MA, and have held this position since 1999.
2. One of my responsibilities in this position is to mail envelopes containing correspondence with the US Patent and Trademark Office for Thomas DiMauro.
3. On September 14, 2001, I mailed the original of the attached copy of correspondence and certificate of mailing by first class mail, with sufficient postage, in an envelope addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231. Also attached is a copy of the postcard contained within the envelope.

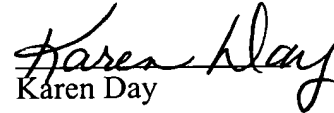
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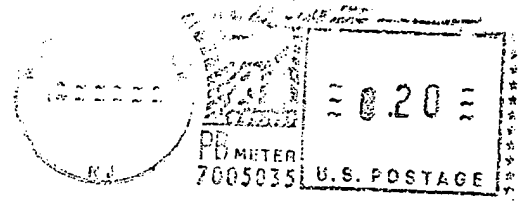
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4. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with knowledge that will false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the instant patent application and any patent issuing thereon.

Respectfully submitted,

  
Karen Day

10/4/01 (date)



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**JOHNSON & JOHNSON**  
**Law Department Room 3-221**  
**One Johnson & Johnson Plaza**  
**New Brunswick New Jersey 08933-7003**

SERIAL NO. 09/784,383 DOCKET NO. DEP0468 BY TMD  
APPLICATION OF Voellmicke et al. MAILED: 9/14/01  
ENTITLED Vertebroplasty Injection Device and Bone Cement  
Therefor

THE FOLLOWING HAS BEEN RECEIVED IN THE U.S. PATENT OFFICE ON THE DATE  
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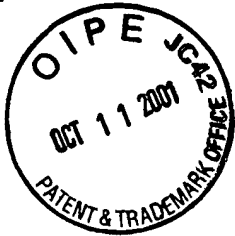
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| <input type="checkbox"/> AFFIDAVIT                               | <input type="checkbox"/> DECLARATION | <input type="checkbox"/> EXTENSION OF TIME                            |
| <input checked="" type="checkbox"/> AMENDMENT <u>Preliminary</u> |                                      | <input type="checkbox"/> NOTICE OF APPEAL                             |
| <input type="checkbox"/> ASSIGNMENT FOR RECORDING                |                                      | <input type="checkbox"/> OATH OR <input type="checkbox"/> DECLARATION |
| <input type="checkbox"/> BRIEF                                   |                                      | <input type="checkbox"/> POWER OF ATTORNEY                            |
| <input type="checkbox"/> CHARGE TO DEPOSIT ACCOUNT 10-0750       |                                      | <input type="checkbox"/> PRELIMINARY STATEMENT                        |
| <input type="checkbox"/> DRAWINGS _____                          |                                      | <input type="checkbox"/> PRIORITY DOCUMENT                            |
| <input type="checkbox"/> ISSUE FEE TRANSMITTAL                   |                                      | <input type="checkbox"/> STATUS INQUIRY                               |
| <input type="checkbox"/> LETTER                                  |                                      | <input type="checkbox"/> SPECIFICATION _____ PGS                      |
| <input type="checkbox"/> PCT FILING                              |                                      | <input type="checkbox"/> CLAIMS _____                                 |
| <input type="checkbox"/> IDS - FORM-1449                         |                                      | <input type="checkbox"/> _____  |

FORM 113788 REV. 7/96

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Karen Day (signature)  
Karen Day

10/5/01 (date)

Thomas M. DiMauro (name of Registered Representative)

---

Assistant Commissioner for Patents  
Washington, D.C. 20231

REQUEST FOR CONFIRMATION OF FILING DATE

Sir:

Enclosed please find the Preliminary Amendment and return postcard for the above-captioned patent application, each of which were mailed by Applicants to the USPTO on September 14, 2001 with a Certificate of Mailing in compliance with 37 CFR 1.8a in order to obtain a filing date of September 14, 2001.

It appears that the US Postal Service mistakenly misdelivered the envelope containing this Preliminary Amendment back to the undersigned at the undersigned's return address marked on the envelope. On October 1, 2001, the undersigned received this misdelivered package at the undersigned's return address and immediately opened it to confirm its contents.

Also enclosed with this letter is the original envelope in the which the Preliminary Amendment was mailed and returned to the undersigned, along with a photocopy thereof. Please note that the original envelope twice bears a US post office mark of September 14, 2001.

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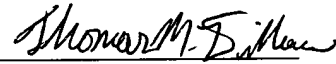
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Since the Preliminary Amendment was mailed on September 14, 2001 in full compliance with 37 CFR 1.8a, and its subsequent non-delivery to the USPTO appears to have been solely due to a mistake by the US Postal Service, Applicants respectfully submit that this Preliminary Amendment should be accorded a filing date of September 14, 2001.

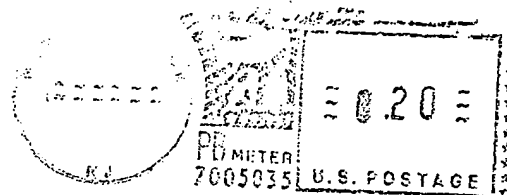
Also enclosed is a Statement and Declaration of Karen Day, who attests to the previous timely filing of the above-mentioned correspondence.

In the event the USPTO disagrees with the Applicant's position taken above, then, in the alternative, also enclosed herewith is a petition for a suspension of the rules, under 37 CFR 1.183, in order to accord the Preliminary Amendment with a filing date of September 14, 2001.

Respectfully submitted,

  
Thomas M. DiMauro  
Attorney for Applicants  
Reg. No. 35,490  
DePuy AcroMed Inc.  
325 Paramount Drive  
Raynham, MA 02767  
(508) 880-8401

10-04-01



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| <input type="checkbox"/> DRAWINGS <u>                    </u>    | <input type="checkbox"/> <u>                    </u>                   |   |
| <input type="checkbox"/> ISSUE FEE TRANSMITTAL                   |  |   |
| <input type="checkbox"/> LETTER                                  |  |   |
| <input type="checkbox"/> PCT FILING                              |  |   |
| <input type="checkbox"/> IDS - FORM-1449                         |  |   |

FORM 113788 REV. 7/96

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T. DiNardo  
● **DePuy Acromed**™  
a Johnson & Johnson company  
325 Paramount Drive  
Raynham, MA 02767-0350  
USA

Assistant Commissioner for Patents  
Washington, DC 20231

